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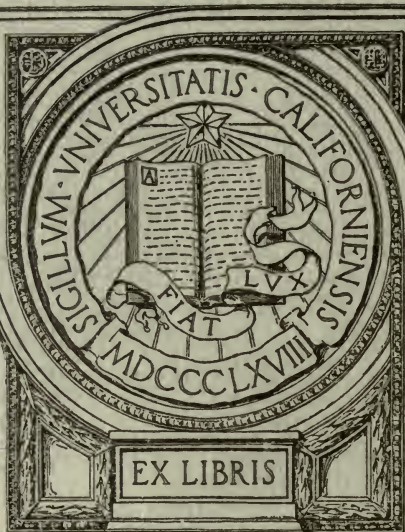
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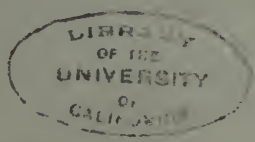
NOTES AND OPINIONS

ON

Certain Aspects of Insurance

UNDER THE

Foreign Compensation Laws



BY

P. TECUMSEH SHERMAN

of the New York Bar

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~~GIFT OF PROF. WHITNEY~~

WILLIAM BROSMITH, Esq., Manager,
Bureau of Publicity-Casualty Insurance,
700 Main Street, Hartford, Conn.

Dear Sir:

In compliance with your request for a critical analysis of the foreign workmen's accident compensation laws in their insurance aspects and for my opinion as to their respective merits and demerits with reference to their adaptability to conditions in this country, I submit the following. For convenience of reference the matter is arranged under principal topics.

Yours very truly,

P. TECUMSEH SHERMAN.

New York, June 24, 1912.

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Notes and Opinions on Certain Aspects of Insurance Under the Foreign Compensation Laws.

The Compensation. Differences in the scales of compensation in the various work-accident compensation laws need here be noted only so far as to point out where they are so material as to cause material differences in the cost of insurance.

Generally the cash compensation prescribed is so measured that the proportion thereof payable by employers approximates on the average 50% of the estimated wage losses resulting from the injuries compensated for. The greatest variations from the rule are to be found in the law of The Netherlands where the percentage is 70, in that of Finland where it is 60, in that of Russia where, for permanent disability, it is 66 2-3, and in that of France where, for permanent disability, it is 60.* Where in the laws of other countries the rate of accident compensation exceeds 50% of the wage loss the excess is generally offset by exceptionally long waiting periods, by contributions from the workmen or by exceptionally low maximum limitations.

In Greece the compensation is 50%; but half of its cost after the first three months, is imposed upon the Miners' Provident Fund, to which workmen's mutual aid societies contribute.

In Sweden and New South Wales the compensation is not all in proportion to the wage loss, but is limited to provide a minimum relief just sufficient to prevent destitution. For distinction this kind of quasi-compensation may be called "poor relief". It is of course much cheaper than "compensation". In Sweden this compensation is paid wholly by employers.

* In Norway the rate is 60%, but the first four weeks are compensated by sickness insurance, if any. If there be no sickness insurance compensation for the first four weeks is paid by the employer directly and not by the accident insurance fund.

New South Wales its cost is divided equally between the workmen on the one hand and their employers and the state on the other hand.

In Great Britain employers are liable for compensation for certain occupational diseases due to the employment; and the published insurance rates are for insurance covering this liability. Under all the other compensation laws diseases are not injuries for which accident compensation is payable. (But in many countries they are covered by sickness insurance schemes).

In France, where an injury is determined to have been due to the inexcusable fault of the employer, the amount of the compensation is materially increased. This extra liability (which in practice is almost a negligible quantity) is covered by the usual form of insurance. Somewhat similar provisions are to be found in some of the other laws; but generally they are penal, and the liability therefor is not covered by insurance. In Great Britain the employer remains subject to a liability for full damages at Common Law and for *limited* damages under certain employer's liability statutes in addition to his liability under the compensation law; and the published insurance rates are for insurance covering all these liabilities. And a similar liability for negligence is retained in Denmark and Sweden.

Under the laws of the following countries there is payable as compensation for injuries — in addition to the cash benefits — the cost of medical and surgical treatment during the following periods:—

“First aid”—Italy.

During first 6 months — Belgium.

After first 4 weeks — Norway.

“ “ 10 “ — Hungary.

“ “ 13 “ — Germany and Luxemburg.

Whenever necessary in consequence of the injury —
France, The Netherlands, Russia, Spain and Greece.

NOTE. In Germany, Austria, Hungary and Luxemburg — and since 1911 in Norway — compulsory sickness insurance

provides medical and surgical care during the first few weeks after injury. In Great Britain and its colonies it is presumed that the employer or his insurer will be induced by his self interest to furnish such medical and surgical care and treatment as may be truly necessary.

In some countries the cost of this item is a very large part of the total cost of compensation.

The Liability. The individual employer is directly liable for compensation;—no obligation or inducement to insure;—liability not dischargeable by insurance. But, upon conditions and by agreement with his workmen, the employer may substitute a scheme of mutual benefit insurance in place of his legal liability.

Great Britain and the following of its colonies: Alberta, British Columbia, Cape of Good Hope, New Zealand, Quebec, Queensland, South Australia, Transvaal, and Western Australia.

The individual employer directly liable for compensation;—liability dischargeable by insurance;—insurance optional.

Russia,¹ Spain, and Denmark.²

The individual employer directly liable for “poor-relief”;—liability dischargeable by insurance *if* in the state insurance office;—insurance optional, but security for accrued liabilities may be required.

Sweden.

The individual employer directly liable for compensation;—liability dischargeable by insurance;—insurance optional; but all employers (France) or all uninsured employers (Belgium) are taxed to maintain a state fund to guarantee the payment of compensation for death or permanent disability (France) or for temporary disability (Belgium).

France³ and Belgium.⁴

¹ Insurance of certain miners compulsory.

² Insurance of seamen compulsory.

³ Insurance of seamen compulsory.

⁴ Insurance of miners compulsory.

The state, through the Royal Insurance Bank, directly liable for compensation;—the individual employer being liable to the said bank for the compensation to his employees and for his share of its expenses of administration;—the employer's individual liability for compensation dischargeable by insurance *if* in the Royal Insurance Bank;—insurance or security compulsory.

The Netherlands.

The individual employer directly liable for compensation;—liability dischargeable by insurance;⁵—insurance (or security) compulsory.

Italy and Finland.

An employers' compulsory mutual insurance association directly liable for compensation; the employers belonging to each association being collectively liable to it for its liabilities, and the state undertaking to see to it that all the associations are maintained solvent and pay their liabilities. For the cost of compensation the individual employer is assessed in proportion to his payroll and his risk.

Germany,¹ Austria,² Hungary, and Luxemburg.

The state itself, through its Insurance Office, liable for compensation; to meet the cost thereof employers taxed in proportion to their respective payrolls and to the estimated risks of their respective industries.

Norway.

The individual employer directly liable for compensation for the first three months disability and for half the compensation thereafter;—the remaining compensation (if any) payable and all compensation guaranteed by a state fund maintained by assessments levied on employers and on workmen's mutual aid societies.

Greece. (Miners, quarrymen, etc. only.)

⁵ In Italy only insurance in National Accident Association discharges the liability.

¹ In Germany the employer is directly liable for some compensation.

² In Austria there are some exceptions to the general rule of compulsory association insurance.

“Poor-relief” payable from a state fund maintained by fixed rates of assessments levied on workmen and employers and by contributions by the state.

New South Wales. (Miners only.)¹

In America there is a disposition to seek by amendment of the law to provide just and expedient compensation for injured workmen without regard to the question of who shall pay the cost. But if compensation is to be given to workmen as a matter of legal right and not of public charity, there must be a correlative and equivalent legal liability to pay the cost; and it is of primary importance that that liability also should be just and expedient. Consequently in an analysis of the compensation laws it is a point for primary inquiry as to each law to find out upon whom the liability to pay the cost of compensation is therein imposed and to decide whether or not such imposition is just and expedient.

From the foregoing summary it is manifest that in the laws of Great Britain and of nearly all of those of its colonies that have compensation laws, of Spain, Russia, Denmark, Sweden, France, Belgium, Italy, Finland, and The Netherlands the liability to pay the compensation for each injury is imposed upon the particular employer of the particular workman injured, or is so placed that the cost of such compensation will be borne by him. And although not so manifest and although the employer's individual liability is concealed behind the legal liability of an insurance association, etc., nevertheless (as will appear from later analysis) it is certainly the purpose of the laws of Germany, Austria, Hungary, and Luxemburg to impose upon each individual employer a share of the total cost of his insurance association strictly in proportion not only to his payroll but also to the actual risks encountered in his employment. It is a logical inference from the foregoing that all these laws are based upon an idea of employer's responsibility for causation and a juridical principle

¹ Somewhat similar insurance of miners is compulsory in Belgium; and like schemes formerly existed in Würtemberg and Baden.

that it is *just* that each particular employer should indemnify or bear the cost of indemnifying his injured workmen to the extent required of him by the law,* that the fundamental purpose of all these laws is to enforce that principle, and that insurance where incorporated in or made obligatory by any of these laws is not an intrinsic factor, but rather an ancillary method of effectuating that fundamental purpose. And while it is entirely consistent with that purpose for the state to contribute and to require workmen to contribute towards the cost of insurance or to require workmen to contribute so as to increase the amount of the indemnity, yet it is entirely inconsistent with that purpose to compel the use of methods of security or insurance which will shift the cost of the compensation liability or any part of it upon the state or taxpayers generally or which will distribute it among employers arbitrarily and not as above stated.

The law of New South Wales, on the other hand, is not based upon any idea of employer's responsibility. The workmen are required to pay half the cost of insuring themselves, the employers are required to contribute one quarter thereof and the state contributes the remaining quarter. The purpose here is to prevent the social evil of pauperism from work-injuries by assuring a certain measure of poor-relief at distributed expense, and not to enforce a responsibility of the employer.

The law of Greece is a composite of these two different principles.

The law of Norway belongs in principle to the first class; but it fails to distribute the cost according to its purpose.

* This is contrary to the idea that relief of work injuries is a "duty of general society;" (see Emery, "Workmen's Compensation," Annual Bulletin of Comparative Law Bureau of American Bar Association, July 1, 1911). It is not meant to be denied that in some respects many of the Continental laws fall within the domain of what is there termed "public" as distinguished from "private" law; but it is contended that under all these laws the liability of the employer and the right of the injured workman are, according to the terminology of English and American law, distinctly "private."

NOTE 1. In this connection it should be noted that the legal *liability* for compensation is itself insurance, for it is a quasi-contract (*i. e.* a contract imputed or imposed by law) on the part of an employer, association, etc. to indemnify his or its workmen for their losses in certain amounts and upon certain contingencies. Wherever this basic liability subsists all other or further insurance is in the nature of reinsurance.

NOTE 2. The term "social insurance," now in frequent use, is of too loose and indefinite a significance to serve as a differential term by which to distinguish any particular class of compensation insurance. In one sense all the compensation laws constitute social insurance—even the laws of Great Britain, Russia, Spain, and Denmark, because they make the employer liable *as an insurer* to his injured workmen. In other senses only those compensation laws which provide technical insurance or insurance more or less at joint or public expense may be termed social insurance laws. But how far the state must go in the way of requiring, supervising, providing, or paying the cost of insurance before it should be termed "social" is a question of terminology that is wholly unsettled.

NOTE 3. It will be seen from the foregoing that—contrary to an impression common in America—there is no general "Continental system of social insurance" for work-injuries in contradistinction to the British system of direct liability for compensation, and that, so far from being exceptional, the British system is merely the simplest form of the majority type.

Security. In New South Wales, there being no underlying employer's liability and no state guarantee, the only security for the payment of compensation is the fund itself; and consequently the payment and the amount of the compensation are dependent upon the continuance and sufficiency of the fund.

In Greece the employer's liability for part of the compensation is secured by the insurance fund; but for the remainder of the compensation, for which the fund is primarily liable, there is technically speaking no security.

In Norway the state itself has assumed the liability to pay all compensation through its General Insurance Office,

so that all the resources of the state are security for the payment.

In The Netherlands the state has implicitly assumed the liability to pay all compensation through the Royal Insurance Bank; and it secures itself against loss by requiring security from private insurance companies and uninsured employers, and by compelling all employers either to insure in said bank or in approved private insurance companies, or to furnish security.

In Germany, Austria, Hungary, and Luxemburg the liabilities of each insurance association are secured by the collective (joint and several) liability of its members.

In Italy it is compulsory for the employer to insure the payment of compensation either in the National Industrial Accident Insurance Association (a co-operative association of savings banks under strict state supervision), in private companies, in mutual associations, or in establishment funds;¹ and, moreover, the state maintains a *guarantee* fund.

In Finland² it is compulsory for the employer to insure in a private or mutual company or association, or to furnish guarantees.

In Belgium³ the State taxes uninsured employers for a fund to *guarantee* the payment of compensation for temporary disabilities.

In France⁴ the State taxes all employers for a fund to *guarantee* the payment of pensions for death and permanent disablement, while compensation for temporary injuries is secured by a preferred claim on the assets of the employer.

In Great Britain, Russia, Sweden, Denmark, and the British Colonies the injured workman is given a preferred claim upon the assets of his employer. And in Great Britain

¹ But the government is authorized to establish compulsory insurance societies in particular cases.

² Special provisions for seamen.

³ Special provisions for miners.

⁴ Special provisions for seamen.

he is in effect subrogated to the rights of the employer in and to any employer's liability insurance that the latter may hold.

Many of the laws contain provisions requiring special security for *accrued* liabilities, as follows:

In Belgium employers are required to deposit in the National Retirement Fund the capitalized values of pensions for which they have become liable.

In Finland uninsured employers must deposit in an insurance company the capitalized values of pensions for which they have become liable.

In Sweden uninsured employers may be required either to deposit security with the state insurance office or to buy annuities therein to secure the payment of pensions for which they have become liable.

In Russia employers retiring from business must furnish security for the payment of pensions for which they are liable.

In The Netherlands private insurance companies and employers who have given guarantees in lieu of insuring must make deposits with the Royal Insurance Bank to cover indemnities currently falling due and the capitalized values of pensions for which liable.

Purposes of Compensation Insurance. Insurance of compensation is required or resorted to for the following purposes:—

(1) In the form of a *system*, to collect from various contributors (voluntary or otherwise) a fund out of which to pay the compensation.

Examples of compulsory systems with this purpose:—

New South Wales, Greece, Austria, Germany, and Norway.

Under the laws of Great Britain,* of nearly all its Colonies and of Sweden it is permissible for an employer, under conditions and by agreement with his workmen, to substitute a voluntary system of mutual benefit insurance in place of his legal liability.

* See Act of Dec. 21, 1906, Sec. 3.

(2) In the form of a *system*, to collect a fund to *guarantee* payment by the parties liable.

Examples: France, Belgium, and Italy.

(3) In the form of a *contract*, to secure payment to the injured workmen *and* to indemnify the employer.

This is the form of the contract or "policy" of insurance in private companies or associations which prevails in Europe. It corresponds to our "collective insurance."

(4) In the form of a *contract*, solely to indemnify the employer.

This is the prevailing form of contract or policy in America, and is commonly termed "employers' liability" insurance. Where abroad insurance of compensation is compulsory this form of policy is not permitted; and where abroad insurance serves to discharge the employers' liability for compensation it is not valid for that purpose.

It is now generally recognized, that the fourth form of insurance, while a necessary concomitant of the discarded liability laws, is socially harmful, because it insures only employers *against* their employees instead of operating directly for the benefit of the latter in proper cases. But it is a mistake to believe that any of the other forms of insurance is in all cases socially beneficial. Where needed, as is generally the case, either to secure the workmen or to distribute the employer's risks insurance is of great benefit. But where not needed for either of these purposes,—where, as is sometimes the case, the employer is directly liable and is responsible and able to defray his compensation charges without embarrassment—insurance is wasteful. And it is always industrially harmful to the limited extent that it disturbs the direct relations between employer and employed—whether it be in a stock company, in a mutual association or in a state office or scheme. Of these three forms of insurance, the last—in my opinion,—by reason of the political element, is by far the most disturbing.

State insurance has for a purpose to keep down insurance rates; (see "State Insurance in Competition with Private Insurance").

Compulsory state-insurance and compulsory mutual insurance have for a purpose not only to secure the workmen but also to provide insurance cheaply for the benefit of employers (see "Cost of Insurance"). In this connection it should be borne in mind that it is harmful to provide insurance for hazardous establishments too cheaply — *i. e.* below cost — for that amounts to subsidizing the maintenance of hazardous methods and conditions of industry. It is an established doctrine that unduly to cheapen rates for fire insurance tends to increase the fire risk. That doctrine applies also and with equal force to accident compensation insurance.

State Insurance. State-insurance is insurance by the state itself in or through a fund or office maintained by it and managed by its officials.

In Norway state-insurance is compulsory,—that is, it is compulsory to insure in the state insurance office, which has a legal monopoly of this branch of the insurance business.

In Italy* and The Netherlands insurance (or security) is compulsory and there is state-insurance; but it is not compulsory to insure in the state's insurance office,—other alternative forms of insurance (or security) being also permitted.

In New Zealand insurance is purely voluntary; but the state itself sells accident compensation insurance (as well as fire and life insurance) in competition with private companies.

In Sweden insurance is optional but the state sells accident compensation insurance.

In France and Belgium the state provides *guarantee* insurance. In France the National Accident Insurance Fund also sells insurance of compensation for permanent disability or death. In Belgium the law provides that the National

* The National Insurance Fund of Italy is not strictly a state institution, but is a voluntary mutual association of savings banks under close government supervision, not operated for profit, and favored by free Post Office facilities, remission of taxes, etc., etc.

Retirement Fund shall (or may?) sell accident compensation insurance; but that provision has not been carried out.

NOTE 1. In France and Finland there is compulsory state-insurance of seamen.

NOTE 2. "State-insurance" must not be confused with "compulsory insurance". Compulsory insurance is such insurance as is required by law, whether it be state or private insurance. For illustrations: There is compulsory insurance in Germany, Hungary, Austria, and Luxemburg, but it is not state-insurance; and there is state-insurance in Sweden, but it is not compulsory insurance.

NOTE 3. State regulation or supervision of insurance and of insurance companies and associations also must be distinguished from state-insurance. In New York, for example, insurance is subject to many regulations; but those regulations neither partake of the nature of state-insurance nor tend towards it.

NOTE 4. The state insurance offices of France, Belgium, Sweden, The Netherlands, and Denmark also sell annuities to cover pension payments, upon purchasing which annuities employers are discharged from the liability for the pensions.

State Fund Insurance. This kind of insurance is insurance which is provided by a fund maintained by taxes or assessments levied by the state. It is distinguished from pure state-insurance by the fact that although the state manages the fund it does not itself assume the liability to pay the compensation or guarantee its payment, and consequently that the payment and amount of the compensation is dependent upon the continuance and sufficiency of the fund.

The law of New South Wales provides for insurance in this form; and, so in part, does the law of Greece. Under the law of New South Wales the contributions are fixed and consequently the rate of compensation cannot be; and therefore the law provides that the Governor shall revise the scale of compensation to correspond with the financial condition of the fund. Under the law of Greece, vice versa, the rates of compensation

are fixed and consequently the assessments and contributions cannot be; and therefore the law provides that the insurance officials shall vary the assessments and contributions to be levied as may be necessary to maintain the sufficiency of the fund.

Mutual and Establishment Fund Insurance. The following forms of mutual and of establishment fund insurance are contemplated or permitted under the various compensation laws.

(1) Where a group of employers join in an association to insure the payment of their joint liabilities for compensation.

(2) Where a group of employers and their workmen join in contributions to a fund to insure compensation.

(3) Where a group of employers and their workmen join in contributions to a fund to insure the payment of compensation and of other and additional benefits equivalent to the workmen's contributions.

(4) Where a single employer and his workmen join in contributions to a fund for the purposes specified in (3), *supra*.

(5) Where an employer alone maintains a fund to insure compensation (or something more) to his workmen.

In Germany, Hungary, and Luxemburg form (1) is compulsory. (It is, however, in effect form (2), because compensation for the first weeks is provided by sickness insurance funds, to which the workmen contribute.)

In Austria form (2) is compulsory.

In Italy forms (1) and (5) are permitted, but do not discharge the employer's liability.

In The Netherlands form (1) is permitted, but does not discharge the employer's liability.

In Finland, form (1) is permitted, and discharges the employer's liability.

In France forms (1) and (3) and establishment funds along the lines of forms (4) and (5) are permitted, and discharge the employer's liability.

In Belgium forms (4) and (5) are permitted and discharge the employers' liability. Form (3) and presump-

tively also form (1) are also permitted, but discharge the employer's liability for temporary disabilities only.

In Russia forms (1) and (3) are permitted, and discharge the employer's liability.

In Denmark form (1) is permitted, and discharges the employer's liability.

In Sweden, insurance being voluntary, almost any kind of insurance is tolerated, but nothing except insurance in the state office discharges the employer's liability. The law, however, permits employers and employees by agreement to substitute other arrangements, provided they are equally favorable to the workmen, in place of the legal liability. (No information as to the operations of this provision is available.)

In Great Britain and its colonies (New South Wales excepted) all forms of insurance are permitted; but they do not discharge the employer's liability. The law however permits employers and employees by agreement to substitute other schemes of benefit or insurance in place of the legal liability, provided they are equally favorable to the workmen. Under this provision form (4) has had some success.

In all the countries mentioned, except Great Britain, its colonies and Sweden, insurance in whatever form and of whatever effect, and in Great Britain, its colonies (New South Wales excepted) and Sweden, insurance under the substituted schemes there permitted, is minutely regulated by law or official orders as to reserves, etc., etc., and is subjected to strict governmental supervision. And in some of those countries particular insurance associations or particular forms of insurance are especially favored by law in ways too various and complex to be detailed.

Stock Company Insurance. This kind of insurance is in private companies which sell insurance for profit, the policy holders neither sharing in the profit, if there be a profit, nor

being subject to assessment to make good the loss, if there be a loss.

Insurance in stock companies is permissible in Great Britain, Sweden, and the British Colonies (New South Wales excepted), but it does not discharge the employer's individual liability. In France, Denmark, Russia and Spain, if in an approved company, it discharges the employer's liability. In Belgium, if in a Belgian company, it discharges the liability; but if in a foreign company, although authorized to do business in Belgium, it does not. And in Italy, the Netherlands and Finland, where insurance or security is compulsory, insurance in approved stock companies is an optional form of compliance with the law — but in the two former countries it does not discharge the employer's liability.

Guarantee Insurance. Three countries maintain funds to guarantee the payment of compensation by the employers liable or their insurers, namely: Italy, France, and Belgium.

In Italy the fund is under the supervision of the Government Bank of Deposit and Loans and is supported by fines for non-compliance with the requirement to insure and by other fines and by collecting compensation for fatal injuries where there are no dependents. (No information is available to the writer as to the condition and operations of this fund.)

In France the guarantee fund is managed by the National Old Age Retirement Fund and is supported by taxes, in the nature of occupational license fees, upon all employers covered by the law. But it guarantees pension payments for death or permanent disability only, and leaves the compensation for temporary disability to be secured by a preferred claim on the assets of the employer. The tax is not heavy (in 1906 it aggregated 1,859,053 francs on an aggregate payroll of 3,615,000,000 francs), and yet it is sufficient (in 1906 the expenditures of the fund were 743,988 francs). But it is to be observed that by omitting

temporary injuries it avoids about one-third of the burden of a complete guarantee.

In Belgium the guarantee fund is managed by the National Retirement Fund and is supported by a tax on those employers only who do not carry insurance. The fund guarantees compensation for temporary disability only;—uninsured employers upon becoming liable for pensions for death or permanent disability being required to deposit the capitalized values thereof (or security therefor) with the National Retirement Fund.

Premiums. “Level premium” insurance is that which is sold or provided for a definite premium, payable in advance, at the full price for the assumption of risk for a definite period.

Such premiums are charged for insurance by “stock companies” generally, and by the state-insurance offices of Norway, The Netherlands, Italy, France, Sweden and New Zealand.

“Assessment insurance” is provided by funds maintained by assessments levied upon the insured. Such assessments may take the form of more or less regular and definite premiums; but, in addition to such regular payments, the assured remain liable for such further assessments as may be necessary to supply any deficiencies in the funds.

Private mutual insurance companies and associations generally maintain their funds in this way; and so do the compulsory employers’ associations of Germany, Hungary, Austria, and Luxemburg. And the state fund of Greece is maintained in like manner (but by assessments upon both employers and workmen’s societies).

Rates. It is a postulate of the advocates of compulsory mutual or state insurance that insurance for profit is a social evil. That postulate is a quasi-socialistic assumption. The greatest desideratum of insurance (next to soundness) is that the rates charged shall be fair;—and to be fair accident rates

should be in proportion to the risks. And especially is it important that the rates for particular employers among competitors in the same industry should be differentiated according to risks, for otherwise all material incentive to efficiency in accident prevention on the part of the individual employer will be removed.

Where insurance is voluntary or where private insurance or security is permitted, competition among insurers tends to produce a fair differentiation of rates, and the alternative of standing out or of furnishing security enables employers to bargain freely for fair rates. But where state officials fix the rates for all or where the state compels mutual insurance in one specified mode, the state must see to it that the rates are fair, otherwise its scheme of insurance may become a serious social evil.

In Norway the problem of fair rates is practically ignored. The state-insurance office's rates are "flat" for each industry. And although it is being attempted gradually to fix correct rates for the different classes of industry, experience tables show that for a large proportion of them the rates have varied extremely from the demonstrated risks. (See Bulletin of Bureau of Labor, No. 90, pp. 800-1.)

In Germany, Austria, Hungary and Luxemburg, on the contrary, the laws prescribe or contemplate methods of rate fixing designed to result in approximately fair rates. The methods under the German and Austrian laws are here summarized for illustration.

In Germany the liability for *industrial** accidents is carried by an association of all employers in each trade or group of allied trades throughout the empire or in each of certain large territorial divisions. The association—or in some cases a section of the association—forms a risk-tariff according to the degrees of risk in the different establishments in the association or section, assigns each establishment to a class in that tariff, and grades the assessments accordingly. This tariff must

*Agricultural and navigation insurance are different.

be revised *at least* every five years *with respect to the accidents that have occurred*. Between re-classifications particular establishments may be transferred from one class to another. The state makes all compensation payments through the Post Office, and at the end of each year charges each association the total of all payments made on its account during that year. Thereupon each association collects that total (plus the amount required for reserves, etc.)* from its members by assessments graded according to the risk tariff. Each new classification of establishments is made with respect both to the accidents that have actually occurred in each establishment during the period covered by the preceding classification, and to the coefficient of risk under actual conditions in each establishment as reported by the association's inspectors. Consequently the rate for each establishment should be approximately fair — that is, if the association be managed fairly.

In Austria the insurance associations (institutions) are organized territorially and include all establishments in all trades covered by the law (railroads and mines excepted) within their respective territories. They are governed by boards of directors consisting of one-third employers, one-third workmen and one-third Government nominees. The general classes of risks are fixed by the Government, but the board of directors of each association assigns each of its establishments to a class. The employer of each establishment is then assessed according to the "coefficient of risk" of that class. Elaborate methods are resorted to to ascertain the risks correctly and to fix the rates accordingly; but it is manifest from experience that some extra hazardous industries have avoided an adequate rate, and by their disproportionate losses have impaired the reserves of the majority of the associations.

In Great Britain the rates are fairly well differentiated by competition and bargaining, particularly for the hazardous industries. The assertion, frequently made, that rates there are "flat," is the reverse of true, as may be seen by consulting

* Expenses of management are assessed differently.

the table under the heading "Cost of Insurance," post, but as may be more convincingly ascertained by enquiry of those who have had experience with insurance in England.

Reserves. An accident causing death or long continued disability under the compensation laws generally gives rise to a liability for a pension, running for an uncertain and sometimes long period and which is a fixed charge on the insurer during that period. There are two insurance methods of meeting such charges.

1. The first method is to charge as an immediate liability *only* that part of each pension which is payable during the current year and to leave the payments falling due in subsequent years on all pension charges to be met by the premiums or assessments for those years.

This method (supplemented by assessments for an equalization reserve) is permitted in Germany for the majority (but not all) of the industrial employers' accident insurance associations. It is used by private employers' mutual associations in Sweden — where such insurance does not discharge the employers' individual liabilities. And there is nothing to forbid it in Great Britain and its Colonies,—where insurance is purely voluntary, does not discharge the employer's individual liability, and is safeguarded by publicity and not by specific governmental regulations.

2. The second method is to charge as an immediate liability the estimated capitalized value of each pension and to maintain in a reserve fund an amount sufficient, with its interest accumulations, to meet all the future payments required on all such pension charges.

This method is prescribed for the compulsory employers' mutual associations of Austria and Hungary (as to Luxemburg, *quaere*) and for the "Engineering and Excavating" association and the "branch institutes" * of Germany, is

* The branch institutes carry the insurance for petty employers, in certain trades.

followed in the management of the miners' fund of Greece, and in all the state-insurance offices — that of Norway included,—is required of all approved private insurance in all countries except Great Britain, its colonies and Sweden, and in these latter countries is required of mutual benefit insurance schemes substituted by agreement in lieu of the legal liability for compensation. (Whether or not the reserves are everywhere properly maintained in accordance with this method is, of course, another question).

In New South Wales neither method is followed. The contributions are fixed. If they do not maintain a sufficiency in the insurance fund to pay the pensions, the pensions must be reduced.

Cost of Insurance. Who should pay the cost of insurance? Because the employer alone should bear the cost of compensation, it does not necessarily follow that he should also pay the cost of insuring it, unless the insurance is purely voluntary and is taken by him primarily for his own protection. But where it is required by law, for the protection of the workmen and indirectly of society, should not the workmen or society pay the cost or part of it?

That society should pay the cost is the view adopted in Norway and Sweden, where the expenses of management of the state insurance office are paid by general taxation. In The Netherlands the state contributes half the salaries of employees of the state insurance office. And in New South Wales the state contributes heavily to the cost of compensation and incidentally to that of insurance. In the other insurance countries generally the state limits its contributions to free administrative assistance — which, however, is sometimes very substantial and expensive.

In New South Wales, Greece, Austria, Germany, Hungary, and Luxemburg the workmen contribute to the cost of compensation and, incidentally, of insurance—in new South Wales heavily, and in Germany, Hungary, and Luxemburg indirectly through the sickness insurance funds.

What is the cost of insurance under the various compensation laws respectively? This inquiry applies to all the compensation laws; for even where insurance is in no degree compulsory it is generally necessary or desired. It is argued that the expenses of management of the private insurance companies in England average 36% of premiums, whereas the corresponding expenses of the Norwegian state office and of the German accident associations average only about 11% and 16% respectively, and, therefore, that the English system is wasteful and comparatively expensive. This argument begs the case for monopolistic insurance as against competitive insurance; for competition always entails greater expenses of management than monopoly. But expenses of management are only one factor in cost, and we are concerned not with one factor only but with the total cost and comparative efficiency of insurance. However, before taking up that inquiry, it is worth while to examine critically into the foregoing assertion as to "expenses of management" in England, Norway, and Germany.

In the Norwegian expenses of management there is not a cent spent for accident prevention. In both the German and English expenses there is a considerable item for that purpose. In Norway the administrative work of collecting premiums, making pension payments, investigating injuries, adjusting awards, etc., is performed by the Post Office and by local officials; and in Germany injuries, etc., are investigated by the local police, and pension payments are made by the Post Office. Undoubtedly there is economy in this use of pre-existing governmental machinery; but it results in shifting upon the government or other branches of the government a large portion of the expenses of managing the insurance and thereby in concealing that part of them. Moreover the use of local political machinery for such purposes gives rise to abuses which waste the funds and increase the cost, and yet arithmetically decrease the ratio of expense. Reduced expense of management means increased expense of mismanagement. The expenses of mismanagement are to be found among the claims. To disregard

them and to limit attention to the accredited expenses of management is vitally misleading. To go further into this item of expense of management, note that in Germany all injuries lasting less than 13 weeks (about 78% of reported work-injuries) are investigated by local police, etc., and disposed of at the expense of sickness insurance without any expense to the accident insurance associations; that in Norway all injuries lasting less than 4 weeks (about 64% of reported work-injuries) are similarly disposed of without any expense to the accident insurance fund; but that in England all injuries lasting over one week are good claims against the accident insurers and require investigation, so that probably less than 30% of work injuries are disposed of without material expense of management. In other words in England not only do the computed expenses of management include this expensive item of investigation, which in Norway and Germany is shifted onto general taxes and ignored, but also the accident insurance covers *a much higher proportion of work-injuries*. Or to put it differently 78% in Germany and about 64% in Norway of certain expenses of management of the insurance of compensation for work-injuries falls upon the sickness insurance and not upon the accident insurance funds. Finally, in Germany an important part in the management of the accident associations is borne by employers, who are drafted for this service, and remunerated insignificantly. At first the employers assumed this philanthropic duty enthusiastically; but now, according to Herr Friedensburg, they are becoming weary of it and disposed to hire substitutes if that were permitted. This service costs the drafted employers time and labor the value of which should be but is not charged as an expense of management. In short the 11% of premiums in Norway and the 16% in Germany respectively do not cover the expenses of management, but only that portion of them which is paid in cash by the insurance office or associations. What is the true ratio to premiums of total expenses of managing the insurance in Norway and Germany respectively no one knows, because a large part of it is shifted over where it is concealed. There is nothing to indicate that state or compulsory-mutual in-

insurance gives service equivalent to private insurance at less relative expense. The only saving is in part of the commissions paid to agents; and as against that saving is the extra cost of the abuses of monopoly. Sound, efficient, and satisfactory insurance at the least cost is the desideratum; and there is nothing to indicate that the total cost of insuring compensation is relatively any lower in Norway or Germany than in Great Britain. Behind the demand for state insurance on the part of many employers is not a belief in its relative cheapness, but a desire to shift part of the cost of compensating for injuries in their businesses onto the general body of taxpayers.

Now, what is the actual cost of insurance in these three countries,— which we will take as typical for purposes of comparison? It would be desirable also to take into the comparison the cost in France and Sweden — in France because of its industrial importance and in Sweden in order to learn the effect of competition on the cost of insurance in a subsidized state insurance office. But the only itemized rates of the stock companies in France which I can find are old and were far below cost; and in Sweden the liability is for “poor relief,” which costs much less than the English, German, or Norwegian liability for compensation.

The following comparative table of insurance rates for a few of the more important hazardous industries in Norway, England, and Germany shows the approximate cost in those countries respectively. It has been compiled from the tables of Mr. Miles M. Dawson, published in the Bulletin of the Bureau of Labor, September, 1910 (No. 90). The rates are given in percentages of payrolls.

The figures under “Norway” are the flat rates at which all employers in the given trade-class are taxed. (The *two* figures under “rolling mills” cover four classes with a special rate for each.)

The figures under “England” are the maximum and minimum premium-rate published by either the tariff or non-tariff companies. These published rates are not only well

differentiated, but in practice some bad risks are refused even at maximum rates and some good risks accepted in special classifications below minimum rates. In the industries for which no rates are given a special rate is fixed for each case, depending upon the particular risk.

The figures under "Germany" are the average assessment-rates in each given industry for the year 1908 — there being considerable differentiation for different establishments in each association or section. (Where two figures are given for one trade there are several classes in the trade with a different rate for each.) Note that the German rates do not cover the expenses of management of the insurance associations, which are assessed separately, nor generally the employers' direct liability for 16 2-3% accident compensation between the fifth and fourteenth weeks after injury; (for particulars of this additional liability see the German Workmen's Insurance Code of July 19, 1911, Arts. 573-7; Bulletin of the Bureau of Labor, No. 96.)

	Norway	England	Germany
Boiler construction	2.31	1.25-2.00	3.80
Brewery and malt works . .	1.43	.75-.875	1.86-3.30
Carpentry — general contract-			
ing	2.18	.75-2.50	2.32
Carriage factories	1.54	-2.50	.84
Casting works — Iron . .	1.47	.625-3.00	1.42
" " — Steel . .	1.47	.625-3.00	2.03
R. R. Construction — exclud-			
ing tunneling	3.01		2.30
Drayage, rigging and heavy			
and heavy moving . .		1.00	4.94
Electrical — machinery plants	1.22		.98
" — installing lights,			
etc.	.94	.50-1.50	1.10
Furnaces — blast	1.47	.625-2.50	1.42-3.25

	Norway	England	Germany
Laundries — power	.73*	1.00	1.17
Locomotive works	1.36	.875-1.50	1.69
Machine and repair shops —			
power	1.36	.75-2.00	1.69
Painters — exterior	1.41	1. -3.00	1.01
Powder factories — black	2.88*		4.04
Rolling mills	.95-1.92*	.625-2.50	1.42-3.25
Sawmills	1.99	1.25-2.50	4.19
Stonecutting on buildings	2.40	2.50	1.51
Tanneries	.76	.75	8.23
Tool makers	.80	.75-2.00	1.62
Turning factories — iron	1.47		.84
" " — wood	1.44	.625-2.50	1.50
Wood pulp factories	1.57	1.25	2.55

The comparison is not exact for three reasons: (1) Because the scales of compensation differ. But the comparison is more than fair to Norway and Germany, for their scales of compensation for injuries only, beginning from the end of the fourth and thirteenth week respectively, cost less respectively than the English scale of compensation for both injuries and trade-diseases, beginning sometimes from the date of injury and sometimes from the end of the first week. (2) The rates for Germany do not represent the cost of insuring compensation during the current year, but rather that proportion of the cost of maintaining the insurance scheme which happened to be assessable that year. But the comparison is not unfair to Germany, for certainly the rates for 1908 were far below the normal — i. e. what they will be when the steady increase in rates due to the deferred assessment method of insurance will have ceased and rates will have reached a stage of equilibrium. (3) The English premiums cover *all* the cost of insurance. The Norwegian premiums do not, the expenses of management, amounting to 11% +, being paid by the state. And the German pre-

* Experience has shown that these rates have been far below cost; and the Norwegian insurance office has doubtless raised them.

miums do not cover any of the expenses of management, and do not procure complete insurance. Therefore the comparison is unfair to England. To calculate approximately comparative cost from comparative rates $11\% + x\%$ should be added to the Norwegian rates and $16\% + y\%$ to the German rates.

The conclusion from a study of comparative rates is that the English system of voluntary insurance in private companies in spite of the heavier expenses of management costs little more, if not less on the average, than state or compulsory mutual insurance, and costs much less for well equipped and well conducted establishments than state insurance.

In dismissing this topic it should be emphasized that free competition does not necessarily result in sound and cheap insurance. How to bring about that result is another problem. What is here contended is that that problem has been solved in Great Britain, and that the British form of insurance is the desideratum, and consequently should not be rejected on the score of cost, if it is otherwise more sound and satisfactory.

Accident Reduction. Employer's individual liability for compensation which — as has been shown — is the basic principle of nearly all the compensation laws, is an effective regulation for accident reduction. Those who advocate that law for that purpose are rightly wary of insurance schemes, because insurance defeats that purpose if the rate of insurance in any trade is below the cost of the direct liability, or, where insurance is compulsory, if the rates for competitors in the same trade are not so differentiated as to be closely proportionate to the risks in each establishment. To be exact, the harm from such improper insurance rates varies under different conditions. It is immaterial in many miscellaneous unorganized employments wherein the employers have really little or no control over the occupational risks. But in the organized and hazardous industries generally, that is, in those very industries wherein the inordinate increase of work-accidents has caused the prevailing demand for reform in the law of employer's liability, it is most serious.

The bad effect of too cheap a rate for insurance in organized hazardous trades is illustrated by experience in Austria, where nearly all the insurance institutions, by fixing rates too low for some large hazardous industries — with strong political influence, — have clearly encouraged the use of dangerous means and methods of production in those industries.

The bad effect of a "flat rate" may be illustrated by an actual case under the operation of the insurance law of Washington. There are or were in that State, when the law took effect, three powder mills — the Dupont Company's and two others — which for convenience will be designated A, B, and C. Powder mills are in a class by themselves and workmen injured therein must look for compensation to a fund raised by a tax upon the payrolls of such mills alone.* Of those three mills, A (the Dupont Co.'s) had an annual payroll of \$144,000 and its annual tax was \$14,400. B had a payroll of \$15,000 and its tax was \$1,500. C had a payroll of \$9,000 and its tax was \$900. This being the first year of the scheme the fund is limited to the amounts received from these three items of taxation. A is a branch of one of the largest powder manufacturers in the United States. It employs none but competent and experienced workmen, and its operations are supervised by a staff of highly skilled experts. It avoids the use of compounds and methods which experience has shown to be too unsafe to be used in the manufacture of powder. It has spread its buildings over a large tract of ground and has so segregated its departments that a general disaster is almost impossible.† On the other hand C was what may be termed a "wild cat" concern, and was conducted with cheap labor, regardless of experience and in non-compliance with state regulations. An explosion occurred in C, which almost wiped it out of existence and killed eight workwomen. The exact

* It should be noted that this does not distribute the risk adequately, and consequently is vitally defective as insurance. In this respect the Washington law is much worse than anything to be found abroad.

† See "A Novelty in Legislation," by Will G. Graves, of Spokane, Wash.

amount of compensation due the dependents of these deceased workwomen is in dispute, but it *might* have been \$32,000; — in which event A would have been taxed \$14,400, and would be liable to an additional assessment of almost equal amount to pay for the consequences of C's bad methods of business. As a matter of fact A has not paid its assessment, but is litigating or proposes to litigate to test the constitutionality of the law.† Assuming the foregoing statements to be correct — and if they happen to be inexact it does not affect the argument, — until that litigation is terminated all of the compensation, except a few hundred dollars actually paid into the fund, must be paid by B or not paid at all, or be assessed on employers generally. If eventually A and B be compelled to pay, the result will be a crushing tax on their payrolls for the encouragement of wildcat competition. As for the future, let us suppose that B operates with medium safety so as in the long run exactly to consume its contributions to the fund, then what will be the effect on A? Undoubtedly there will be a succession of minor competitors like C, without capital or experience, that will run every risk for the chance of profit. Certainly their ratio of losses will far exceed A's, and A will have to pay the lion's share of that excess. Can it stand such competition, or will it be induced to skimp its expenditures for safety and thus be drawn down towards the level of its competitors? Economic sense points emphatically to the conclusion that it will be drawn down.

There is an idea prevailing that the state can prevent any such consequence by factory inspection and safety regulations. To a limited degree only is that practicable. In the above described case establishment C was operating in violation of

† It is an amusing illustration of the obtuseness of bureaucrats to the imperfections of their schemes, that the Washington insurance officials are indignant at the Dupont Company for resisting the gross injustice attempted to be inflicted upon it; and that their retort to the complaint of that company is in effect that it is a wicked trust. (Human Engineering, April, 1912, p. 20).

official regulations and orders,* but A has to pay the penalty therefor. It is true that in a long course of years factory inspection may force all establishments like C to be conducted with the medium degree of safety which we have supposed characterizes B, but it certainly cannot force establishments of the classes of B and C up to the high grade of safety which characterizes A. Police laws and police can no more make perfect factories than they can make perfect men; — they can only prevent specific acts of wrong. To make perfect factories — *i. e.* factories that are as safe as practicable — the law should bestow an economic advantage upon safety. “Flat rate” insurance, where imposed by law, on the contrary, legally penalizes it.

It should be understood in this connection that it is not the opinion of industrial experts that either the direct liability for compensation or insurance at proper rates by itself will have any great and continuous effect in reducing accidents. To produce that result the compensation liability must be conjoined with proper safety regulations and expert inspection and enforcement. But, on the other hand, insurance at improper rates does have a powerful negative effect in discouraging accident prevention.† In other words the way to danger is easier than the way to safety.

Great Britain and its colonies depend for accident prevention upon the employer’s direct liability for compensation in conjunction with state regulations and factory inspection.

The conclusion of the British Departmental Committee on Accidents upon the effect of this system in accident reduction, are summarized in the Annual Report of the Chief Inspector of Factories for 1910, p. vii (Parliamentary Papers for 1911, Cd. 5963), as follows: “They find that while the accident risk probably remained almost constant in the decade 1897-1907, any increase due to extended use of machinery and

* See semi-official statement (Human Engineering, Apr. 1912, p. 21).

† See Address by the writer before Massachusetts’ Bar Association, Dec. 28, 1911.

greater pressure* being counteracted by improved inspection and by the greater care resulting from the Workmen's Compensation Act, it has decreased since 1907, owing to the causes named above and to the experience of employers in the efficient guarding of machinery. They regard the increase of reported accidents up to 1907 as due almost entirely to improvement in reporting, which since that date has been less marked, so that the effect of lessened risk has shown itself in the statistics."

Mr. John Calder, a leading expert in industrial safety, in a brief filed with the Congressional Employers' Liability Commission (Report of Hearings, Pt. 2, p. 768), describes the effect of the British compensation acts as follows:

(1) An immediate increase in the total volume of *reported* accidents.

(2) An immediate and large increase in the volume of *reported* trivial and nonpreventable accidents, followed by a continued but not so large annual increase.

(3) An improvement in safeguarding and safeworking precautions due to the attention of factory inspectors being concentrated on safety measures, to the pressure from the skilled inspectors of the insurance underwriters and to differential insurance rates being conceded in return for proved reduction of risks, etc.

(4) A reduction in the rate of serious and preventable accidents, irregularly varied for particular industries by temporary increases due to trade pressure in busy seasons; — this reduction in rate being obscured by a slow but perceptible rise in the annual total of such accidents, due to an increase in the number of people employed.

That the compensation liability has had a powerful effect in the line of accident prevention see also testimony of Messrs.

* It should be borne in mind that the first stage in accident prevention is to check the progressive increase in the ~~rates~~ of work accidents incident to the modern developments in industries. How much beyond that accident prevention can effect is uncertain.

Gill and Clynes, M. P. before the New York Employers' liability Commission (Minutes of Evidence, 1910, pp. 81, 89).

In Germany accident prevention in industries rests largely with the employers' mutual accident insurance associations. These associations having a strong interest to reduce the number of accidents, the law has conferred on them the power, subject to approval by the appropriate authorities, to prescribe preventive rules and regulations, and to send inspectors at any time into any factory or establishment in the association to see that these rules and regulations are complied with. The inspectors of each association are experts in its line of work, and are in no way subject to politics. On their reports and according to actual rates of accidents the establishments in each association are assigned to the various classes in its risk tariff; and, as before stated, the rates of assessment are graded according to such risk tariff.

The results in the *industrial* associations from 1888-1907 have been as follows:

(1) While the total volume of fatal injuries has steadily increased, the ratio thereof to the number of persons employed has remained nearly constant at about 0.68 per 1,000.

(2) The total volume of injuries causing permanent total disablement has been largely reduced, the ratio thereof being reduced from 0.43 to 0.06 per 1,000.

(3) The number of injuries causing permanent partial disability compensated for has trebled and the ratio thereof has increased from 2.38 to 3.36 per 1,000.

(4) The number of temporary injuries compensated for (lasting over 13 weeks)* has increased tenfold and the ratio thereof has increased from 0.68 to 4.26 per 1,000.

The results from 1890 to 1907 in the *agricultural* associations (which cover forestry) have been as follows:—

* Over 78% of all injuries reported lasted less than 13 weeks.

(1) The ratio of fatal injuries has remained nearly constant at about 0.25 per 1,000.

(2) The ratio of injuries causing permanent total disability has remained nearly constant at about 0.05 per 1,000.

(3) The ratio of injuries causing permanent partial disability compensated for has increased from 0.67 to 2.42 per 1,000.

(4) The ratio of temporary injuries compensated for has increased from 0.60 to 2.88.

A comparison of items (2) and (3) indicates that accident prevention has been far less successful in the agricultural than in the industrial associations.

For more comprehensive data on this subject see Report of Imperial German Government Commission on Workmen's Insurance. (Reichstag Doc. No. 340, 12th Leg. Period, 2d Session, 1909-10).

In Austria the insurance associations are organized by territorial districts instead of by industries, and their rates have been unfair; and the conduct of factory inspection is bureaucratic. The following is a comparison of the ratios of injuries per 1,000 "full-time workers" in 1890 and 1906. (Note that agriculture is not covered).

	Requiring compensation.		Not requiring compensation
	Fatal	Not fatal	(Lasting less than 4 weeks)
1890	0.67	7.52	11.3
1906	0.63*	17.59	44.97

Allowing for differences in the method of calculation and tabulation these figures are less favorable than those of Germany for *industrial* accidents.

In France there is state inspection and regulation and the direct liability for compensation. Published insurance rates

* The ratio of fatal accidents has not really decreased, but has varied from year to year—the year 1905 showing a ratio of 0.68. The increase in the other ratios has been steady.

have been rather "flat," but the companies discriminate, favor good risks and decline or penalize bad ones.

The results from 1904 to 1910 are as follows:

The ratio of fatal injuries has remained nearly constant.

The ratio of injuries causing permanent disability has remained nearly constant.

The ratio of temporary injuries has increased about 50%.
(See Market World & Chronical, 1912).

In Norway there has been no co-operation between the state insurance office and the government department of inspection. And admittedly the Norwegian insurance can have no effect for accident reduction. (Frankel and Dawson, p. 50.) Unfortunately statistical data of accidents in Norway are not available in any language known to the writer.

In The Netherlands the insurance is said to be ineffective for accident prevention; (Frankel and Dawson, p. 61).

In Italy a voluntary association of employers for the prevention of accidents and the introduction of safety devices is reported to have been most effective. (Frankel and Dawson, pp. 87-881).

Comprehensive scientific investigation of industrial accident prevention is still in its infancy; and statistics of industrial accidents are not yet sufficient to demonstrate much in regard to the relative efficiency of the various laws in the line of accident reduction. Consequently in arriving at conclusions on this question it is proper to rely principally upon the opinions of experts in industrial safety. The preponderance of such expert opinion is that the British and German laws have been the most effective in that direction; and that the Norwegian and Austrian laws are comparatively inefficient. And such statistical data as is available confirms such opinion.

Adjustments and Litigation. A principal purpose and advantage of the compensation law is that it reduces the waste

and burden of litigation incident to the administration of the old law of negligence.

In Great Britain and its colonies (New South Wales excepted) adjustments are made directly between the employer or his insurer and the injured workman or his dependents. In case of dispute the questions at issue are determined judicially, under special and appropriate rules of practice and procedure.

In France the general practice is the same; but there is more bureaucratic supervision and interference. And the same is true of some other of the direct liability countries on the continent.

In Denmark claims are adjusted by the state insurance office; and the employer or his insurer is bound to make payments according to such adjustment. In Sweden the practice is similar.

In The Netherlands all adjustments are made by the Royal Insurance Bank; but an appeal lies to the courts from its awards.

In Germany awards are made in first instance by the employers' insurance associations, ex-parte; but are often preceded by something closely resembling a trial. From such awards appeals lie to Courts of Arbitration.* And from a decision of any such court an appeal (called a "recourse") lies to the Imperial (or State) Insurance Office.

In Norway the State Insurance Office makes all adjustments, generally through communal officials; and its awards are final.

It is claimed that the method of adjustment resorted to in Norway and Denmark is the best, that the German method breeds litigation, and that the English method has increased litigation even over the old negligence law.

The assertion that the English compensation law has increased litigation is founded upon a confusion of ideas. Because the compensation acts of 1897 and 1906 in the aggregate have increased nearly tenfold the number of cases in which some-

* As to practice on review of revisions of awards, see Code of 1911, Arts. 1600-7.

thing is recoverable for work-injuries they have naturally increased the number of cases which appear on the court dockets for trifling motions, etc. And each act in turn gave rise to a number of cases involving questions of construction, which for a short time increased litigation. But now, the ratio of litigation has much decreased, and the volume and delays of litigation have both enormously decreased. Official returns for 1909 give the ratio of claims settled judicially as less than 20% in fatal cases and less than $\frac{1}{2}$ of 1% in cases of disablement. (N. Y. Journal of Commerce, Oct. 25, 1910.) And the figures for one insurance company for the year 1908 (cited by Mr. Packer in Appendix to Report of Congressional Employers' Liability Commission, p. 103) show that out of 10,343 accidents there were only 55 claims (0.5 per cent.) for "damages" under the retained law of negligence, and only 123 arbitrations before a judge (1.2 per cent.) under the compensation act. And the expert testimony of Messrs. Gill and Clynes, M. P., before the N. Y. Employers' Liability Commission (Minutes of Evidence, 1910, pp. 77, 81, 82, 86, 90) was to the effect that litigation has very much decreased—that adjustments are generally automatic.*

In Germany the question is more complex. There is endless red tape and much complaint of litigation. Herr Friedensburg declares that appeals are fostered by the Imperial Insurance Office. And the workpeople complain of the ex-parte awards of the employers' associations. But there is some exaggeration in these complaints. Strictly the original awards, while more cumbersome and less automatic than the direct adjustments under the English law, do not involve litigation;—real litigation commences with appeal to the Courts of Arbitration. According to Herr Brodsky ("The Survey," N. Y., May 4, 1912), in 1910 17.5% of awards were so appealed; and 30% of the decisions of the Courts of Arbitration were again appealed to the Imperial (or State) Insurance Office. This, he declares,

* Note that compensation is even now, May, 1912, being adjusted for losses on the Titanic.

is a decrease in the ratio of appeals to the lower courts and no increase in the ratio of appeals to the higher. Moreover, he points out that a large proportion of the cases so appealed deal with the difficult matter of revision of pensions due to changed conditions on the part of the beneficiaries*—a most important matter which is more or less ignored in the laws of other bureaucratic countries, but a matter in which there is grave danger of abuse, if, as in Germany, frequent applications upon trifling grounds are tolerated without penalty.

The Norwegian and Danish method of adjustment and conclusive awards by administrative officers practically eliminates all formal litigation, and so far as we know — there being little information available of the actual workings of the law in those countries and what little there is coming from official and prejudiced sources — there is little complaint. But although this method eliminates litigation it leaves the administrative officers open without check to irregular appeals to their discretion and subject to various improper influences. An award of compensation, whether the compensation is payable from a fund for which employers or a group of employers are taxed or by an employer directly, takes the property of one person or group of persons and gives it to another person. Experience demands that before that should be done the party or group to be deprived of property should have a reasonable opportunity to submit the facts and to be heard upon the law, and that the application of the law to the facts should be determined judicially. There is no more justice or expediency in the proposition that a person or persons should be taxed to pay compensation in a given case according to the unbridled discretion of administrative officers than that a person should be compelled to pay damages for an alleged wrong to a stranger or for a breach of contract, in like discretion. If this method of determining rights and liabilities be sound and expedient, then all judicial procedure should be abolished; for administrative procedure is quicker and cheaper than judicial procedure. It

* See Code of 1911, Arts. 608, 1600-7.

is to be noted that when the practice of administrative adjustments and awards was adopted in the Ohio law, it was modified by a provision that the *claimant* may appeal from such administrative decision. In other words, it was deemed right not to conclude claimants by such a doubtful method of determination. Why then, in common fairness, should the liabilities of those who have to pay the bills be so concluded? Nor is it just or expedient that the parties liable for compensation should be wholly dependent upon the care and means of uninterested bureaucratic officials for protection from the burden of frauds and exaggerations. Employers directly liable and their insurers, having an immediate interest, are on the watch to detect fraudulent and exaggerated claims in a manner which cannot be expected of state officials. That they meet with undue favor and thereby succeed unduly in resisting claims is contradicted by all experience. Whatever, therefore, may be the success — which is uncertain — of the Norwegian and Danish method of adjustment, under the peculiarly favorable conditions in those countries, that method is nevertheless far too dangerous a model to imitate.

Abuses. Like every other good thing the compensation law has its specific abuses. The principal are malingering, simulation, etc., “doctors’ graft” and discrimination in employment against the aged and infirm. There are, naturally, no accurate data of the extent of these abuses; but, upon the principle that where there is much smoke there must be some fire, undoubtedly they are common.

The inclination upon slight excuse to take an occasional vacation at half pay is common to human nature; and consequently the compensation laws give rise to much malingering, except where there is a “waiting period” sufficiently long to check it. Complaints of malingering are loudest in France and Italy, where the waiting periods are short, and are common in England where the right to compensation reverts back if malingering be continued long enough. There is also some complaint of it in Germany, in spite of the fact that compensa-

tion for the first 13 weeks is dispensed principally from the sickness insurance funds, to which the workmen contribute heavily.

Simulation, exaggeration and various forms of fraudulent impositions find their most fertile fields where compensation is dispensed by governmental routine. Admittedly they are the bane of the state-insurance institution of Italy. And they are said by Herr Friedensburg to be increasing under the German system, owing to a disposition on the part of the state officials to treat the right to compensation, not as a juridical question to be determined according to the law, but as a matter in which every doubt is to be resolved in favor of charity. If such a disposition is manifested in Germany, against the opposition of the employers' associations, a yet more "liberal" policy of awards is to be feared from purely political insurance systems like those of Norway, Sweden, France, Italy, and The Netherlands. It does not appear that the state insurance offices of those countries go to sufficient expense to guard against impositions. Certainly they do not do so if their true total "expenses of administration" are of the low ratio claimed. Either they are not guarding sufficiently against these most serious abuses, or there is a most important item omitted from their estimates of "expenses of management." It would appear that the desire to show low expenses of management has induced them to neglect precautions against imposition.

"Doctors' graft" under the French law is an abuse almost equivalent to "ambulance chasing" in America. Generally it is attributed to the fact that under that law an injured workman may choose his own physician. But probably it is unavoidable under any law which entitles an injured workman to medical attendance at his employer's expense "whenever necessary"; for then any physician may attend in the absence of the employer's physician, and before a jury his word will be as good as any one's that his attendance was necessary. This abuse is checked where there is separate sickness insurance, and where, as in Italy, the employer's liability is for "first

aid" only. And it does not exist where, as in England, there is no compensation liability for medical care. And English experience leaves it doubtful whether there is any need for such a liability, the employer being under strong incentive, from his liability for compensation, to furnish all proper medical treatment — and the best treatment.

Discrimination in employment against the aged is complained of in England, but is an evil of disputed proportions. That it exists at all is more generally denied (see testimony of Mr. Gill, M. P., before N. Y. Employers' Liability Commission, "Minutes of Hearings, 1910," p. 76). But it is more reasonable to suppose that employers do so discriminate considerably, not only because the aged are somewhat more liable to injury as would appear from the German statistics but also and more particularly because accidents to elderly persons often lead to permanent disabilities caused not so much by the injuries as by old age, and which consequently obligate the employers to pay what are in effect old age pensions in addition to compensation for the injuries. It is difficult to form an estimate of the extent of this discrimination, because there is, independently of this cause, a universal preference for younger men in taking on new workmen, particularly in the more hazardous industries. But whatever may be the extent of this discrimination elsewhere, it is almost entirely avoided in Norway and New South Wales, because there individual employers are not much concerned financially with the number and consequences of injuries to their respective employees; and probably it is reduced in Germany by the fact that work-accident disability and old age disability are there distinguished, and each is provided for by a separate system of ^{substantiated} equal compensation.

State-Insurance in competition with Private Insurance.

In France, The Netherlands, Sweden and New Zealand the state sells compensation insurance in competition with private companies. In Italy a state supervised and favored association of savings banks does the same.

In France the state insures against the liability for death or permanent disability only. Naturally this partial insurance

is seldom taken, and about 99% of the insurance is placed elsewhere — principally in stock companies.

In Italy private insurance is handicapped in competition with the National Accident Insurance Fund by the facts that the latter is not operated for profit, escapes many items of expense in management by the free co-operation of the Post Office and of local officials, and is favored by a remission of taxes. In The Netherlands private insurance is handicapped by the fact that those who insure in private companies are nevertheless taxed for the expenses of management of the state insurance office (other than one-half the salaries of employees, which are paid by general taxation.) And in Sweden private insurance is handicapped by the fact that the expenses of management of the state insurance office — including commissions to agents — are paid by general taxation, whereas the expenses of management of the private companies must be paid by the policy holders. And in all these countries private insurance is further handicapped by the fact that only insurance in the state insurance office discharges the employer's individual liability. In New Zealand alone is the competition fair. Under these conditions private companies are winning the field in New Zealand, holding their own in Italy and The Netherlands and yielding ground only slowly in Sweden. If this experience leads to any conclusion it is that private companies, through superior knowledge and efficiency, sell cheaper or more satisfactory insurance. The trouble with state-insurance under competition has been that the state insurance office gets nearly all the bad risks and the risks in those lines in which it accidentally places its rates too low, and then has to compete with the private companies for the good, paying business.

The avowed objects of state-insurance are to eliminate profits and to keep down rates. In competition with private insurance state-insurance has not demonstrated its effectiveness for the latter purpose. It is therefore being sought in Italy and Sweden, by increasing the privileges of and the favors to the state insurance office, to eliminate private competition, with a view to arriving ultimately at a state monopoly, as in Norway.

And this movement, actuated on the part of the state officials by a desire to reduce expenses of management by eliminating the expenses of competition, etc., is being aided by a political tendency towards socialism. The choice, therefore, seems to lie between monopolistic state-insurance on the one hand and no state-insurance at all on the other.

Tendency. There is a common impression in America that the European work-accident compensation laws have been developing in the direction of state-insurance. This impression is far from being accurate. The various compensation laws were enacted in the following order:

Germany, 1884.	(Compulsory mutual insurance.)
Austria, 1887.	(" " " " .)
Norway, 1894.	(Compulsory state-insurance.)
Finland, 1895.	(Compulsory insurance or security.)
Great Britain, 1897.	(Simple liability.)
Denmark, 1898.	(" " .)
France, 1898.	(Direct liability with compulsory guarantee- and competitive state-insurance.)
Italy, 1898.	(Compulsory insurance and competitive state-insurance.)
Spain, 1900.	(Simple liability.)
Greece, 1901.	(Compulsory mutual insurance.)
Netherlands, 1901.	(Compulsory insurance or security and competitive state-insurance.)
Sweden, 1901.	(Simple liability and competitive state-insurance.)
Luxemburg, 1902.	(Compulsory mutual insurance.)
Russia, 1903.	(Simple liability.)
Belgium, 1903.	(Direct liability with compulsory guarantee-insurance.)
Hungary, 1907.	(Compulsory mutual insurance.)

British Colonies:

New South Wales, 1900.	(Compulsory mutual insurance.)
New Zealand, 1900.	(Simple liability and competitive state-insurance.)
South Australia, 1900.	(Simple liability.)
West Australia, 1902.	(" " .)
British Columbia, 1902.	(" " .)
Queensland, 1905.	(" " .)
Cape of Good Hope, 1905.	(" " .)
Transvaal, 1907.	(" " .)
Alberta, 1908.	(" " .)
Quebec, 1909.	(" " .)

Starting in Europe with a system of compulsory mutual insurance in Germany, which was promptly (but imperfectly) copied in Austria, compensation next appeared in the compulsory state-insurance law of Norway. It is generally admitted that this form of insurance was not adopted with any idea that it was an improvement upon the German system, but because the employers' mutual associations of that system would be impracticable in Norway. Thereafter there came a reaction. First, Finland permitted employers to insure in any one of several ways; and Great Britain and Denmark stopped short with the simple liability. Since then the majority of the other countries have adopted the law of employer's direct liability supplemented by various provisions designed to secure its payment. Luxemburg and Hungary have merely followed their big neighbors, Germany and Austria. And while Italy, Sweden, and The Netherlands have adopted and maintained competitive state-insurance institutions under conditions that manifest a tendency to revert to monopolistic state-insurance in the Norwegian form, Spain, Russia, and Belgium on the contrary—the first two countries by their laws and the last by the action of its insurance officials—have followed the conservative models.

In the British Colonies the tendency away from state-insurance has been decided. New South Wales started off with

compulsory mutual insurance, supplemented by state aid, for its miners. New Zealand adopted the simple liability along with competitive state-insurance. The reaction from these empiric social experiments was prompt; and all the other colonies that have since adopted compensation laws have followed the example of the mother country in choosing the simple liability.

Leaving aside the manifest tendency towards greater assurance, and towards more general provision of insurance against sickness, etc., and confining ourselves strictly to our subject of work-accident compensation, the conclusion is that the foreign compensation laws do not show any tendency towards state-insurance.

The British Law. As has been stated, the British compensation law* is a direct liability law, which imposes no obligation upon and offers no inducement to the employer to insure. Nevertheless insurance is general although not universal — many large establishments, the railroads particularly, carrying their own insurance. Insurance is principally in stock companies, but there are some important mutual associations and establishment funds.

The advantages of this law are:—

(1) It is the simplest and least experimental first step in the line of departure from the obsolete law of negligence, and at the same time is the form of compensation law most readily adaptable to development in any line that future experience may dictate.

(2) It contests with the German “industrial accident insurance” law for the supremacy in efficiency in accident prevention.

(3) It interferes least with the accustomed liberties of the private parties affected.

(4) It avoids the abuses and dangers of bureaucracy incident to all forms of compulsory and state insurance.

* Now contained in Act. of Dec. 21, 1906 (6 Edw. 7, c. 58), which consolidated and extended Acts of 1897 and 1901.

(5) It adheres to the pre-established practice of judicial determination of juridical questions.

(6) It has resulted in a system of cheap, satisfactory and sound insurance.

The proposition that it has led to "satisfactory" insurance, to be exact, requires qualification. Employers nowhere are satisfied with the insurance rates charged them. But compared with the Norwegian or German employer the English employer has this advantage, that if he be dissatisfied with a rate given him he is free and may reject it, and that if he be *rightly* dissatisfied therewith he can generally arrange cheaper insurance; whereas the Norwegian or German employer, under similar conditions, is bound and helpless.

The fact that insurance does not discharge the employer's liability is an advantage of the English law, because it tends to sound insurance. When selecting insurance the English employer does not unqualifiedly pick out the insurer with the cheapest rate, but demands of his insurer assured solvency. On the contrary where insurance in any approved company discharges his liability, the employer naturally seeks the approved company with the cheapest rate; and that practice inevitably leads to entire dependence for solvency upon state supervision and regulation of insurance. In America, if we adopt compensation laws, it would be the reverse of prudent to trust altogether to that one method of securing sound insurance. For then many "mushroom" liability insurance companies would probably spring up, and induce extreme competition and dangerously low rates (of which we have a warning example in France).

The principal objections to the British system are as follows:

(1) It provides no certain security to injured workmen for the payment of their compensation. It is to be noted that this criticism is not included in the severe arraignment of the English law by Mr. Miles M. Dawson, in his brief filed with the

Congressional Commission on Employers' Liability (1911); and the significance of this omission is that in actual experience in England there has been almost no loss from the omission of any requirement of security (see testimony of Mr. Gill before N. Y. Employers' Liability Commission, "Minutes of Evidence, 1910," p. 81). Looking at the subject practically, it is obviously a hundredfold more needful to require of employers security for their contingent liabilities for "damages" under our existing American negligence laws, than it is to require security for the contingent liabilities for compensation under the English law,—and yet we have never thought it necessary to do so. Why then merely because one liability is substituted for another should the addition of a requirement for security be deemed essential? It is true that accrued liabilities for long continuing pension* payments under the compensation law subject the beneficiaries to the risk of their respective employers continuing solvent during such periods; but it is easy to require security for *accrued* liabilities without requiring general insurance in advance; (see "Security — accrued liabilities"). It is also possible that dummy corporations may be resorted to to defeat the liability (a practice more probable in America than in England); but in that event a particular remedy can be adopted to meet that particular evil. It is also probable that in America compulsory security may prove to be advisable in some trades. It would be absurd, however, to subject all industries to unnecessary bureaucratic domination or to launch the state in an uncertain and expensive actuarial experiment merely to forestall the possibility of an abuse that has not arisen in actual practice.

(2) The English system of insurance entails heavy expenses of management, which mean economic waste. As has already been pointed out (see "Cost") a part of these expenses is the price paid for the advantages of competition.

* In Great Britain compensation to dependents is payable in lump sums. In Denmark and Italy compensation for permanent injuries also is payable in lump sums. There are some abuses incidental to lump sum payments, but they do not affect this discussion.

That price can be saved only by accepting the alternative disadvantages of monopolistic insurance.

But a part of the high expenses of management in England is due to the difficulty of adjustment of the compensation in particular cases, which in turn is due to the fact that the scale of compensation in the British law requires an inquiry into the average earnings of each injured person for a year. The alternative practice is to use the day's wage for the day of injury, multiplied by a certain arbitrary number of days, to estimate the yearly earnings, and to have a fixed schedule of compensation for particular injuries. In a law applying to one trade only (e. g. the Sutherland Bill, now pending in Congress) it is practicable to incorporate such a rule and schedule; but in a law applying to many trades it would work gross inequality and injustice. Nevertheless it is possible to work out such a rule and schedule for each particular trade and to apply it in practice; and that has been done more or less in Germany* by the trade associations in co-operation with the Imperial Insurance Office, and by the State Insurance Office in Norway. But only slight progress has been made in that direction in England; and private insurance in stock companies does not lend itself to that end. Consequently the adjustments in England are a little slow, difficult, and expensive. The English rule is nevertheless retained because it is calculated to effect more even and exact justice; and the difficulties in adjustments do not seem to be serious. The testimony of Messrs. Gill and Clynes before the N. Y. Employers' Liability Commission (Minutes of Evidence, 1910, pp. 77, 90) was to the effect that compensation in England is prompt and "automatic." And on the other hand the German practice sometimes results in compensation exceeding previous earnings.

(3) This system starts with a maximum strain upon industries. The meaning of this is that, upon the adoption of the direct compensation liability, employers, if they insure, must

* In Germany 300 times the daily wage for the day of injury is the general rule prescribed in the law for estimating yearly earnings.

start in abruptly to pay premiums sufficiently high to establish reserves to cover the capitalized values of liabilities accruing during the period paid for — which premiums will undoubtedly be so much higher than for insuring the liability for negligence as to cause some embarrassment at first; whereas under the German system only payments due for the first year need be provided for by the first year's assessment-premiums, and the future payments upon accrued pension liabilities may be left to be provided for by future assessments, and the increase in premiums is thereby made gradual. But there are serious objections* to the German method,— it is too much like issuing bonds to pay for current expenses. And it is to be noted that British industries have passed through the period of initial strain without material embarrassment, and now have the advantage of solvent insurance. And it is also to be noted that all other countries except Germany have elected to meet the initial strain of the increased liability at once, without attempting to distribute it.

(4) This system withdraws a maximum amount of capital from industries. This objection is simply a corollary of the proceeding, and means that the heavy premiums paid into insurance reserves are withdrawn from industry, whereas under the German system employers are allowed to retain and use in their industries a large part (i. e. that part not yet due and payable to the beneficiaries) of the moneys for which they are indebted for compensation. The economic theory underlying this objection requires demonstration; for it is the general opinion that the money paid for insurance reserves is not locked up in vaults, but is invested, and that a fair proportion of it finds its way back into industry.

(5) This system causes discrimination in employment against the aged. This subject has already been fully considered; (see "Abuses"). If the objection is to be deemed material, it may easily be avoided by minor amendment to permit old men to contract for a sliding scale of compensation,

* See "The German Law," post.

dependent upon age, as is now being advocated in England. And it is to be noted that none of the compensation laws, except possibly those of Norway and New South Wales, altogether escape it.

The following additional criticisms of the English law are sometimes advanced.

(1) That the British working people are dissatisfied with it. Against this assertion may be cited to the contrary the testimony of Messrs. Gill and Clynes, Laborite members of the British Parliament, before the New York Employers' Liability Commission; (see "Minutes of Evidence, 1910", pp. 75, 76, 84). Mr. Gill testified, however (p. 82), that there was some "slight" agitation for state-insurance. The reasons for this agitation deserve notice. The demand for state-insurance comes principally from the more socialistic labor unions. The avowed reasons for it are that under state-insurance adjustments would be made by state officials instead of by insurance companies or employers and would therefore be "fairer", that there would be no discrimination in employment against the aged and infirm, and that there would be absolute security for the payment of compensation. But behind these alleged reasons lies concealed the principal motive of those who promote the agitation, which is that general, bureaucratic state-insurance is the next step on the program of the Fabian socialists in the direction of complete socialism.

(2) That the International Social Insurance Congresses (held in Rome in 1908 and at The Hague in 1910) have declared that compulsory insurance is the best and most efficient means of reducing human and economic loss from sickness, work-accidents and disability. Although in sympathy with the general thought and conclusions of these congresses it should be noted, (1) that the direct liability for compensation is itself insurance and complies with the requirements of this doctrine so far as the absence of further security does not result in loss of compensation benefits, and (2) that the attendance at these congresses has been composed principally of enthusiasts

in "social insurance" and consequently that their declarations on the technical subject of prevention of work-accidents have not the weight due to the opinions of experts in industrial safety.

The French Law. The compensation law of France has developed piecemeal and is to be found in various statutes. So much of it as applies to the principal industries* may be summarized as follows: The employer is directly liable for compensation to his injured workmen — the liability including an obligation to provide or pay for all medicines, surgical appliances and medical and surgical treatment made necessary by the injury. The employer may free himself from this contingent liability by insuring in an approved mutual aid or guaranty association or insurance company. He may also free himself from his contingent liability for fatal or permanent injuries by insuring in the National Accident Insurance Fund. He may discharge his accrued liabilities for pension payments for fatal and permanent injuries by the purchase from the said fund of annuities covering such pensions. He may also free himself from his contingent liability for compensation payments and for medical care, etc., during a period not exceeding 90 days following injury, by procuring his employees to belong to a sickness insurance scheme to cover such period, provided that he contributes at least one-third towards the expenses of such insurance. All employers covered by the law are taxed by the state for a guarantee fund, out of which compensation for death or permanent injury is payable where the employer or insurer liable defaults. An injured workman is given a preferential claim for the amount of his compensation against the assets of an uninsured employer. And where the guarantee fund pays the compensation it is given a like preference against the assets of the employer or insurer liable.

The French law emphasizes the distinction between permanent and temporary injuries. It was apparently supposed that the cost of compensating for temporary injuries would be comparatively light and that employers would be able to defray

* Laws of 1898, 1902, 1905, 1906, 1907.

it as part of current expenses without material embarrassment, but that for the heavy burden of the charges for long continuing pensions for fatal and permanent injuries it was desirable to provide some special means of insurance. Accordingly the National Accident Insurance Fund was organized to sell insurance covering such injuries at cost, and another special fund was set up to guarantee the payment of compensation for such injuries. But in practice the cost of compensating for temporary injuries — including the cost of providing medical care, etc.,— has far exceeded all calculations. In 1910 it was estimated to be 29.71% of premiums — 10.05% of the total being for medical expenses alone. (See “ Cost of Workmen’s Compensation ”, *Market World & Chronicle*, 1912, pp. 13, 14.) Consequently insurance in the National Accident Insurance Fund has become negligible; and insurance in France is distributed as follows (roughly):—

French mutual societies	25%
French stock companies	51%
French trade syndicates	8%
Foreign stock companies	16%

Unfortunately, however, these companies have underestimated the cost of compensation, and have persistently kept their rates too low. Although they have raised them from an average of 1.53% (of payrolls) in 1901 to 1.85% in 1906 and to 2.32% in 1907, nevertheless in 1910 they still showed deficiencies of expenditures and liabilities over premium receipts to date, ranging from 26% for the French stock companies up to 79% for the trade syndicates. French employers in the hazardous industries are now complaining bitterly of the burden of the high rates and of the abuses of the law. But it is manifest that the rates must go higher; and it seems probable that political influences will prevent a correction of the abuses. The opinion on the ground, so far as the writer could gather it from confidential sources, is that the French law is a good law — although a little “ messy ”— gone wrong through politics.

Coming on top of the direct liability, the tax for the guaranty fund (see "Guarantee Insurance") is not submitted to amiably by employers. It is a light tax, but bothersome; and much of it is consumed in the expenses of collection. It continually and uselessly raises the often doubtful question of permanency of injury. It leads permanently injured workmen to look primarily to the state for the collection for their dues. And manifestly the method of maintaining the fund is less fair than the Belgian method and less beneficial industrially than the Italian.* Whether or not a somewhat similar system of taxing all employers to guarantee all compensation would be satisfactory in a state where employers are not otherwise harried to death by multiplied taxation and bureaucratic exactions, may be a doubtful question. But it is the writer's emphatic opinion that, unless the workmen contribute substantially, it would work badly.

The German Law. The German system of workmen's insurance is a product of gradual but systematic growth and extension. It is now ^{nearly} all incorporated in the Workmen's Insurance Code of July 19, 1911† (to take effect January 1, 1913). That codification has made no important changes in the prior laws; but in the minor particulars in which changes have been made the Code is followed herein.

The Workmen's Insurance Law is divided into three parts: the sickness insurance law, the work-accident compensation insurance law, and the disability insurance law. Each of these three constitutes a distinct branch of law, although all three (and more especially the first two) are intimately correlated.‡

The accident compensation insurance law is in turn divided into three branches: the industrial accident insurance law, the

* See "Guarantee Insurance," supra.

† See Bulletin of The Bureau of Labor, No. 96. The earlier work-accident insurance laws were enacted in 1884, 1886, 1887, and 1900.

‡ Nevertheless they are so imperfectly correlated that there are many incidental abuses and excessive red tape. The drift of opinion is in the direction of extending sickness insurance to cover accident insurance; but how to do that without abandoning all the good points of the accident insurance law is an unsolved problem.

agricultural accident insurance law, and the navigation insurance law. The first is the law which is held up for emulation in comparison with other compensation laws, which has been referred to as "the German law" throughout this paper, and to which we will principally devote our attention. The third is comparatively unimportant. The second will be referred to briefly later.

The organization and methods of the industrial accident insurance associations have already been partially described; (see "The Liability"; "Security"; "Mutual Insurance"; "Rates"; "Reserves"; "Cost"; "Accident Reduction"; "Adjustments", etc.). Besides in the "associations", accident compensation insurance for their workmen is carried by the Empire, the Federal States and other public bodies, and, for petty employers in certain trades, by "branch-institutes". The associations are all self-governing bodies, managed by the contributing employers, but over which the state exercises control and supervision. The branch institutes are managed by the governing body of the association of which they are respectively branches. By starting work in any trade an employer becomes ipso facto a member of an association or branch-institute.

The advantages of the German *industrial* accident compensation insurance law are as follows:

(1) It results generally in approximately fair rates. (See "Rates").

(2) The delegation of quasi-public powers of regulation and inspection to the employers' associations is most effective for accident prevention. The associations' regulations are less arbitrary and more elastic and efficient than state regulations;* and their inspection is better. Under this system specialists of a high grade devote all their time to a study of the hazards of a particular industry. The thoughtless popular criticism that such inspectors do not cover the field of social uplift, but concentrate their efforts upon preventing accidents, "in the interests of employers in order

* Cf. Shadwell on "Industrial Efficiency."

to reduce the costs to them," is itself evidence of proper concentration of purpose.

(3) The joint liability of groups of employers through their respective associations gives adequate security of payment and yet enables employers, by omitting "capitalized-value reserves" from their association insurance funds, to retain the use of that much more money in their operations. This practice, however, is subject to the disadvantages and dangers hereinafter explained.

(4) Compulsory insurance in this one form for all eliminates the extra expenses incidental to competition in insurance, and yet escapes many of the dangers and abuses of monopolistic state-insurance.

(5) The well known efficiency of German workmen is often cited as a result of and such result as an advantage of this law. But that claim begs a doubtful question. Probably the broad system of workmen's insurance has had a material effect in increasing the efficiency of the German workmen. But would it have been any less effectual had that part of it relating to work-accident compensation been in the English form — or in any other successful form — rather than in its actual form? That question cannot be answered with certainty in the affirmative. In forming a judgment on this question it must be remembered that German efficiency was already famous before the workmen's insurance laws, and that it is generally attributed primarily and principally to the German character, to compulsory military training and to widespread vocational education.

The principal disadvantages of and objections to this law are as follows:

(1) The practices of the associations in the adjustment of compensation are irritating to the workpeople, involve much red-tape, and lead to much litigation. They are apparently less satisfactory than the freer and more direct negotiations of the English employers and their insurers.

(2) The review and final determination of awards by

administrative officers of the Insurance Office has led to many abuses complained of — with some exaggeration perhaps — by Herr Friedensburg. All the facts available indicate that the administration of the insurance law is powerfully influenced by a desire to exercise liberality towards the unfortunate and is governed by the spirit of benevolence rather than of law. Experience everywhere shows that such a policy produces demoralizing effects and carries with it grave danger of fraud and abuse. Throughout all civilization such questions as are involved in the review of awards generally are determined *judicially*, that is by courts of justice. There is no wisdom in depriving the parties of their right to judicial determination of such questions; for administrative boards do not furnish adequate guaranty of impartiality and strict adherence to the law. (See Henry W. Farnam and Ernst Freund, *The Survey*, May 4, 1912, pp. 243, 245; contra H. L. Slobodin, who defends the practice from the standpoint of socialism, *id.*, p. 247.) It should be noted that this tendency to administer charitable relief, not contemplated by the law, is to some extent checked in Germany by the employers' associations. In the Norwegian practice, on the contrary, it is without check. The contention in mitigation that the perversion of a law of private rights to purposes of public charity reduces the volume of necessary poor relief is not supported by figures.

(3) The system of compulsory membership in trade associations has this ^{dis}advantage, that all classifications of trades are necessarily arbitrary, and consequently that it is frequently an uncertain question in which of several associations an establishment should properly be classed; and that between those associations there are often serious differences in rates. The matter of assignment to an association and of transfer from one association to another rests in the discretion of the insurance office. There are consequently constant appeals for transfers; and the officials are subject to diverse and strong political influences in regard thereto.

And transfers, where made, entail serious embarrassments and more or less injustice in the adjustment of accrued liabilities.

(4) The legalized practice of the majority of the insurance associations in omitting to carry "capitalized value" reserves, and in depending upon current assessments to meet the payments upon accumulated pensions as they fall due (see "Reserves"), is subject to the following objections:

(a) While it starts off with pleasingly low rates, it must eventually result in unduly high rates. The universal satisfaction at first felt with the German law was consequently ephemeral. That condition has passed. There are now loud complaints from employers, and their dissatisfaction will increase, as rates continue to rise, as they must for many years to come. The rates in Germany today average about double what they were in the beginning. It is calculated that they will not reach their stable maximum until some 20 years more. How much higher they will then be no one knows, but the majority guess is that they will again double.*

(b) This practice conceals the cost of insurance. No one knows what is the true cost of, as distinguished from the current price charged for, insuring compensation in any given trade in Germany today.

(c) This practice once embarked upon, the law cannot be changed without serious embarrassments; for there are heavy liabilities to be liquidated. The figures for the *industrial* associations alone are not available; but the outstanding capitalized liabilities of all the German accident associations in 1910 were estimated at 1,142,000,000 marks (\$271,900,000), their reserves at 318,900,000 marks (\$75,930,000), and their deficiencies at 823,100,000 marks (\$195,970,000). The English law, per contra, could be radically changed tomorrow, if deemed desirable, without disturbing existing insurance.

* Schwedtman and Emery, pp. 146-7.

(d) This practice handicaps new establishments by compelling them to assume the liability for and to pay a material proportion of the losses of their pre-established competitors. And it imposes upon successful establishments the burden of liability for pensions for injuries incurred in establishments of defunct and insolvent competitors. This may have been the cause of the abnormally high rates in some associations; e. g. tanneries. It is obvious that if a large proportion of establishments in any trade should shut down the financial liability thereby dumped upon the survivors would be ruinous. In this respect the dangers and defects of the German industrial accident insurance are analogous to those of voluntary mutual life insurance — with which we in America are familiar.

(e) Finally this practice is subject to the danger that the accumulated liabilities of the associations, which are in effect mortgages on the various branches of industry, may become so burdensome in a period of depression and contraction, as to crush the industries of the country affected in competition with the industries of other countries not similarly burdened. To meet the increasing cost of overhead charges for past indebtedness in a period of continued prosperity, rising prices and expanding industry, such as Germany has enjoyed for many years, is comparatively easy. But to liquidate a heavy indebtedness, carried over from the past, under opposite conditions is an entirely different matter, and may hurt.

(5) It is a disputed question whether insurance in each and all of the German trade associations adequately “distributes the risk.” Probably those associations are all large enough to do so. But in a smaller state — e. g. in Norway or in a majority of the states of the United States — there would be many trade classes in which there would be too few establishments with too small aggregate assets to provide anything like adequate risk distribution. Truly unfortunate would be the plight of a responsible manufacturer who should be forced into a blind pool with a few compara-

tively irresponsible competitors and saddled with a joint liability for the risks of all. A good illustration of the evil of insufficient risk distribution is the case of the Dupont Co. in Washington, explained above under the head of "Accident Reduction."

(6) "An objection, not to this law per se, but to our using it as a model for imitation, is that it is not suitable to conditions in America. It rests upon a basis of complete bureaucracy, and the trade associations derive all their efficiency from a delegation of governmental powers, forbidden by our constitutions and political principles. (See Frank E. Law, Adelbert Moot and Hugh F. Fox, the Survey, May 4, 1912, pp. 241-3-8; contra C. W. Doten, F. C. Schwedtman and Chas. R. Henderson, id., pp. 246-8-9.) In this connection it should be borne in mind that the legal power of control over the establishments of their members is the vital feature of the industrial associations, and that without that power compulsory mutual insurance would inevitably be seriously harmful. A sufficient objection to present consideration of this law as a model for imitation is that no one in America has ever been able to formulate anything like a suitable adaptation. Whatever may be contended for the compensation laws of Washington, Ohio and Massachusetts, certainly none of them resembles the German law we are considering either in principles or in essential methods.*

Allowing due weight to the foregoing objections to the industrial accident insurance law of Germany, it should nevertheless be recognized that many of them relate to details, which if deemed objectionable, could be corrected without affecting the essence of the system.

The German *Agricultural* accident insurance law differs radically from the industrial law. Employers are organized into associations by territorial districts, rates are levied

* For further objections see Report of Congressional Commission on Employers' Liability, p. 58.

uniformly like taxes, and the management is largely confided to local officials and is becoming more and more bureaucratic and political. The abuses of this law may be exaggerated by Herr Friedensburg, but they are certainly far more serious than is officially admitted. And this form of insurance has no effect in the direction of accident prevention, except to produce the data upon which to base police regulations. It is significant that when the German accident compensation law is held up for our admiration, it is always the *industrial* accident law that is described.

The Norwegian Law. Under this law the employer is relieved of all individual responsibility for compensation. The state has assumed the direct liability therefor, and pays all compensation out of a fund maintained by taxing all employers in the industries covered. The state insurance office assigns the establishments in those industries to different trade-classes, and taxes them according to a rough estimate of the risk in the respective classes. The state pays the expenses of management of the insurance office, adjustments are made by communal officials, premiums are likewise collected by them, and compensation payments are made through the Post Office. The insurance fund is required to be maintained on a reserve or "capitalized value" basis as distinguished from an assessment basis. In the desire for cheapness rates were at first placed too low, with the result that a deficit of about \$100,000 was soon incurred, which was made good by appropriation from the general funds. Since then the fund is supposed to have been maintained approximately solvent.

The one advantage* of the Norwegian system is that it is suitable to the peculiar conditions in Norway. Norway is a thinly populated country with small scattered communities and industries, and with difficult means of intercommunication. The German system, after which it was the original intention

* The idea that the Norwegian system would have an advantage for us in avoiding constitutional objections was fairly disposed of before the Congressional Commission on Employers' Liability; see the writer's brief before that commission, Hearings, pp. 599, 608.

to model the Norwegian law, was thought to be impracticable there because the few widely distributed employers in each trade could not co-operate effectively in organization, and because there are not enough employers with sufficient assets in each trade to provide an adequate distribution of the risks. For similar reasons private insurance would be inconvenient and expensive. Under such conditions general co-operation and the use of existing state machinery has special advantages, while on the other hand the principal abuses of state management,—exaggerations and impostures on the part of workmen, and favoritism to particular employers,—are less to be feared, because less apt to escape public attention.

Combined security and cheapness are also alleged advantages of this system; but these alleged advantages are to be questioned. Probably the Norwegian is the cheapest method to provide insurance under the particular conditions; and certainly state monopolistic insurance avoids the multiplication of some expenses, incidental to competition. But, as has already been noted, insurance costs employers about as much in Norway as in England, although the expenses of management in Norway are shifted onto the public while in England they are included in the rates; (see “Cost of Insurance”).

Against these advantages, real or alleged, the Norwegian system as a model for imitation is subject to the following grave objections.

(1) By flat rates the employer is relieved from all individual financial responsibility for injuries incurred in his employment, and consequently from all material inducement to prevent accidents therein. On the contrary, where his trade is given too low a rate — and up to recent date the rates of the Norwegian insurance office for a large proportion of trades were far below cost — the employer is encouraged to maintain cheap methods and practices of production which are unnecessarily hazardous. It is true that the state insurance office may study — as the Norwegian office is studying — to fix its rates correctly; but in the controlling desire for cheapness of management it is too apt to neglect — as the Norwegian office has neglected —

the expensive investigations required to ascertain what are the proper rates.* Of course the state insurance office may adopt the alternative practice of differentiating rates for particular establishments in its discretion. But the mere suggestion that rates may be so shaded for the benefit of individuals would give rise to charges of favoritism and suspicions of graft that would neutralize any benefits from the practice. And this is so evident that the Norwegian insurance office has never ventured to discriminate between establishments in the same trade class. It may be contended plausibly that the state's office can solve this problem by further differentiation in its schedules; but experience is convincing that no hard and fast schedules of rates can be framed that will result in such proper differentiation between competitors as prevails in Great Britain and Germany and as is essential to accident prevention. Moreover to arrive at a general and fair differentiation of rates would require such an expensive addition of experts in the field and office forces as would sacrifice the cheapness of management which seems to be the sole aim and advantage of Norwegian insurance. So far as experience goes political insurance schemes are irremediably inconsistent with accident prevention. And for that reason, if for no other, they will be, in the long run, the most expensive.

(2) The individual employer is absolutely at the mercy of a bureaucratic administration, which may assign his establishment to whichever of several classes of industry, with widely different risk rates, it chooses, and may fix the premium rate for his industry as it chooses. We have no reason to suppose that the Norwegian Insurance Office has intentionally misused its discretion in this regard; but the opportunities for favoritism and oppression in this particular are tremendous — for a difference in rates between two similar establishments in close competition may be destructive to one of them. If a board of

* It is not meant to be intimated that rates can be correctly fixed without long and wide experience. But there is a vast difference in fairness between rates fixed by careful investigations of actual conditions in the field and rates fixed by guesswork in the office.

“ward heelers” should get control of such an office, its friends would be enriched and its enemies ruined.

(3) The insurance office makes adjustments and awards through its administrative agents. The weight of political influence will almost always be in favor of an award, although the claim may be most doubtful, and of the highest amount claimed. And particularly strong will be the neighborhood influence and the tendency to stretch the law, where local officials are entrusted blindly with the function of making adjustments and awards. There is simply no limit to the perversion of the law probable under such a practice if the government officials are lax, corrupt, subject to political influences or imbued with altruistic ideas of dispensing indiscriminate charity with other people’s money. It is largely because state-insurance has this tendency and furnishes so facile a method of draining private wealth into the pockets of the “proletariat”, regardless of the truth and legality of their claims, that socialists demand it. It is perfectly obvious that if we do not want to build up a class of parasites on industry this method of adjustment must be avoided.

(4) Between the tendency on the one hand to favor employers with low rates and on the other hand to favor workmen with liberal awards all political insurance (of which this is the purest form) is peculiarly apt to result in deficiencies in reserves; and, where a deficiency exists, to shift the burden thereof on to taxpayers generally. That is a miscarriage of the law, and contrary to its whole purpose and intent. It amounts in effect to subsidizing hazardous industries. Such a miscarriage has already occurred in Norway, where a deficiency of about \$100,000 was made good out of the general funds; and while that amount may seem trifling, under conditions in Norway, it is the equivalent of about \$1,000,000 in New York State or \$5,000,000 in Great Britain. Heavy deficiencies now exist in the reserves of the politically controlled accident insurance associations of Austria; and consequently a political struggle is going on there to shift those deficiencies onto the public. Under

a direct liability law or the German system there is little or no danger of such perversions of the compensation law.

(For a more elaborate presentation of the political dangers of state-insurance, see the writer's brief, filed with Congressional Commission on Employers' Liability, 1911 (Hearings, Pt. 2, p. 590); and also articles by Henry R. Seager, Frank E. Law and Adelbert Moot (The Survey, May 4, 1912, pp. 239-244).)

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